IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5184 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MISARIBEN SHANKARBHAI GAJJAR

Versus

DIRECTOR

Appearance:

1. Special Civil Application No. 5184 of 2002

MR NIKHIL D JOSHI for Petitioner No. 1

Mr. Pradip D. Bhate, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/09/2004

ORAL JUDGEMENT

1.1 This petition, preferred by the widow of an

ex-employee of the Government, challenges the inaction on the part of the respondents in not disbursing the family pension due to her from 17-12-1979 and also the amount of gratuity together with interest.

2.1 It is the case of the petitioner that her husband who was working with the Civil Hospital, Ahmedabad in the cadre of Ward Servant (Class IV) had died in harness on account of illness after having been in service from 1976 to 16-12-1997 i.e. till his death. According to the petitioner, she being entitled to family pension and gratuity, the Director of Pension and Provident Fund, Ahmedabad, though sanctioned the same by order dated 20-5-2000 the payments had not been released owing to delay by the Civil Hospital in providing certain information. It is averred in the petition that the Civil Hospital, Ahmedabad had requested the Treasury Officer (Pension) to withhold certain amounts towards leave without pay, ration amount, festival advance amount and market rent for unauthorised occupation of Government Quarters. According to the petitioner, though demanded, she had neither been supplied the details in respect of the aforesaid deductions to be effected from her pension and gratuity nor has she been afforded any opportunity to represent her case.

2.2 It is also her case that an application for compassionate appointment of her son is also pending for consideration by the Health & Family Welfare Department, Gandhinagar. It is also alleged by the petitioner that she had made enquiries and called upon the Treasury Officer (Pension) several times, but all her efforts seeking release of pension and gratuity have failed, and hence, the present petition.

3.1 The respondents have filed affidavit-in-reply controverting the averments made in the petition. It is clear from the statement produced at Annexure "B "to the said reply that an amount of Rs.66,896/- is to be recovered under the head of leave without pay, while Annexure "C' thereof shows that ration amount of Rs.1050/-and festival advance amount of Rs.250/- is also to be recovered aggregating Rs.68,196/-. Paragraph 5 of the affidavit-in-reply shows that an amount of Rs.48,601/-is to be recovered towards market rent for unauthorised occupation of Government Quarters for the period from 17-12-1999 to 12-9-2000.

4.1 The petitioner in her affidavit-in-rejoinder has stated she has not been supplied with details as to on what basis the deductions towards leave without pay and

market rent for unauthorised occupation of Government Quarters have been fixed and effected. The grievance of the petitioner is that the respondents ought to have afforded opportunity to her to represent her case before finalizing the deductions as aforesaid as the market rent charged at Rs.1600/-per month is excessive and exorbitant inasmuch as the Gujarat Civil Services (Occupation of Government Residential Accommodation) Rules, 2002, provide the levy of market rent at Rs.800/-per month only for an employee drawing pay upto Rs.3200/-, and therefore, refund is required to be ordered. She has further sought direction for compassionate appointment of her son and also the interest for delayed payment of pension and gratuity.

5.1 In the instant case, it is not in dispute that the petitioner is receiving regular monthly pension from the respondents. Moreover, by virtue of order dated 17th July, 2003 the petitioner's son has been given compassionate appointment as is borne out from the letter dated 25-8-2004 regarding resumption of duties produced on record. In view of the order dated 20-5-2004 produced at Annexure "C" to the affidavit-in-reply of the respondents, it is amply established that the main grievance voiced by the petitioner has been redressed and does not survive.

6.1 However, in so far as the petitioner's claim for refund of market rent alleged to have been charged in excess is concerned, interest of justice will be served, if the petitioner is permitted to make a representation and the respondents are directed to consider the same in light of the prevailing Rules, and in case the petitioner's claim is found to be genuine and valid, he may be granted refund of the excess amount charged by way of market rent.

7.1 With regard to the claim for interest on delayed payment, it may be noted that the affidavit-in-reply filed by the respondents reflects that some amount is also pending for recovery by the Government from the petitioner, and as such, it will be in the interest of both parties, if no amount is ordered to be recovered from either of the parties.

8.1 As a result of the aforesaid discussion, the petition fails and is dismissed. Rule is discharged with no orders as to costs.

8.2 However, it is directed that the petitioner shall make a representation to the authorities within a week

from the date of receipt of this order for refund of excess market rent charged, if any, and the authorities shall decide the same within two months from the date of receipt of such representation. There shall be no recovery of any amount from either of the parties except with regard to refund of excess market rent.

(K.S,.Jhaveri,J.)

stanley-ksj.